

## DESIGN SERVICES AGREEMENT

### City Hall Elevator Modernization Project

THIS AGREEMENT is made at Fairfield, California, as of October 23, 2017, by and between the City of Fairfield, a municipal corporation (the "CITY") and JE Sellen Consulting, Inc., ("CONSULTANT"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) TERM. This agreement shall be in effect until the scope of work is completed.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation

By: 

David A. White  
City Manager

JE Sellen Consulting, Inc.

By: 



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October 9, 2017 - *revised*

City of Fairfield  
1000 Webster St.  
Fairfield, CA 94533-4836

Attn: Fred Beiner  
P: (707) 428.7431  
[fbeiner@fairfield.ca.gov](mailto:fbeiner@fairfield.ca.gov)

Re: Elevator Modernization  
1000 Webster St.  
Fairfield, CA

Dear Fred,

It is our pleasure to provide this revised proposal for Elevator Consulting Services.

JE Sellen Consulting, Inc. (Consultant) agrees to provide the City of Fairfield (Client) with the following consulting services for the modernization of two (2) traction passenger elevators at 1000 Webster St., Fairfield, CA:

#### ELEVATOR CONSULTING SERVICES

##### I. Survey and Report Phase

- A. Survey the elevator equipment including machine rooms, hoistways, cab interiors, and elevator lobbies to identify the existing systems and to assess the existing condition, remaining service life, and potential for reuse of all components, including:
1. Machine Room: Hoisting machines, controllers, power conversion units, and governors.
  2. Hoistway: Car and counterweight guide rails and brackets, car slings and platforms, counterweights, guide shoes, safeties, buffers, car and hoistway door operating equipment, sheaves, cables, wiring, switches, sills, and sill supports.
  3. Elevator Lobbies: Entrance doors and frames, pushbuttons, position indicators, lanterns, and general lighting.
  4. Cab Interiors: Car operating panels, emergency and normal cab lighting, ventilation, car door protection, and interior wall, ceiling, and floor finishes.
  5. Other Equipment: Smoke/heat detectors, security features, monitoring panels.



## Consulting Services Proposal

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B. Provide a written Elevator Modernization Report based on the survey results including:

1. Executive Summary
  - a. General description of the elevators and elevator spaces and their location within the building.
  - b. Opinion of the remaining service life of the equipment.
  - c. Recommendations for modernization or upgrades including potential alternates.
  - d. Preliminary budget costs for the recommended scope of elevator work and alternates.
  - e. Preliminary schedule of modernization activities.
2. Detailed schedule of existing elevator equipment.
3. Recommended scope of elevator modernization or upgrade and any proposed alternates.
4. Listing of non-elevator work required for a complete and code compliant installation.
5. Building code, fire code, State of CA DOSH/DIR elevator code, and accessibility compliance concerns as they relate to the installed elevator equipment and the recommended scope of work
6. Equipment disposition for individual elevator components.
7. Detailed preliminary budget pricing schedule for the recommended scope of elevator work.
8. Detailed preliminary project schedule including; planning, design, submittals, and installation.
9. Supporting photographs.

### II. Construction Documents Phase

A. Construction documents suitable for soliciting and receiving competitive bids for elevator modernization work to include:

1. Elevator Technical Specifications
  - a. Approved manufacturers
  - b. Elevator equipment performance requirements
  - c. Accessibility compliance
  - d. Compliance with State *and* local codes
2. Bid form in Word format to include modernization pricing, maintenance pricing, unit labor costs, and bidder schedule. Client to incorporate into City required bid documents as necessary.
3. Drawings – none required

B. Prepare an elevator maintenance specification to be incorporated into the City's required contract document to govern elevator maintenance scope of services from contract award



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through completion of the modernization work (Interim,) during the Warranty Period, and ongoing service. Scope of elevator services required by the PMA to include:

1. Callback response times
2. Callback requirements
3. Performance standards
4. Minimum service frequency
5. Complete contract terms and conditions for post-Warranty elevator service

### III. Bidding and Negotiations Phase

A. Provide project management services through bidding and contract award to include:

1. Attend an on-site pre-bid conference with bidders.
2. Review proposals received by Client from invited bidders.
3. Clarify any exceptions or qualifications to the proposals with bidders.
4. Prepare and submit a bid spread sheet to Client, matching bid form with consultants estimate.
5. Attend a bid review meeting with up to two bidders and Client.
6. Assist with contract negotiations.

### IV. Construction Administration Phase

- A. Review elevator contractor's submittals for conformance with requirements of the Construction Documents. Mark-ups to be included on electronically submitted documents and include the initial submittal and ~~one~~ revisions as necessary.
- B. Attend a pre-construction meeting with the elevator contractor, all subcontractors, and the Client to confirm that all required equipment is available and on schedule for a timely start of installation.
- C. Conduct on-site progress reviews and attend meetings as necessary to ensure the work is proceeding on schedule and in accordance with Construction Documents.
- D. Submit a written summary report identifying any work not in compliance and any observations or conditions which may affect the project schedule or which require the Client's attention.
- E. Assist with modernization questions.
- F. Conduct one final review of the completed elevator work, per group or building. Final review to be scheduled after inspection and permitting by the State of California.
- G. Perform punch list back check to confirm all items are complete.
- H. Review close out documents.



## Consulting Services Proposal

### FEES AND EXPENSES

- I. The fee schedule for the services described in this proposal is as follows:

	PHASE	FEE
I.	Survey and Report	\$3,880
II.	Construction Documents	\$5,760
	Elevator Maintenance Specification	\$2,200
III.	Bidding and Negotiations	\$2,450
IV.	Construction Administration	\$9,800
	<b>Total</b>	<b>\$24,090</b>

- II. Reimbursable expenses – None

- III. Payment Schedule – as required by Client

- A. Phases I, II, and III, will be invoiced when the work of each phase is 90% complete.
- B. Phase IV will be invoiced monthly in equal amounts during months in which work is performed. The first invoice will be for submittal review. Subsequent invoices will start when pre-construction meeting is held and will be invoiced equally over the remaining period of installation work until completed.
- C. Payment shall be due upon receipt of the Consultants invoice and considered past due if not paid within thirty (30) days of invoice date. If payment in full is not received by the Consultant within sixty (60) calendar days of invoice date, invoices will bear interest at one-and-one-half (1.5) percent (or the maximum rate allowable by law, whichever is less) of the unpaid amount per month, which will be calculated from the invoice date.
- D. The Client shall notify the Consultant in writing within fifteen (15) calendar days of receipt of the invoice, of any portion of the invoice in dispute by the Client.

### TERMS AND CONDITIONS

- I. Services beyond the scope described herein shall be considered an addition to this agreement and bill be based on a mutually agreeable fee and terms.
- II. Upon receipt of verbal authorization to proceed, the Consultant shall provide the services described herein in accordance with the terms and conditions of this proposal.
- III. The Consultants services shall be performed with the degree of skill and care ordinarily exercised by other consultants providing similar services under similar circumstances in the location of the project. No other warranty is expressed or implied.



## Consulting Services Proposal

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- IV. The Consultant shall perform the described services as expeditiously as is consistent with professional care and diligence and shall not be responsible or liable for any loss, damage, detention, or delay caused by accidents, strikes, lockouts, or by any other cause which is unavoidable or beyond the Consultant's control, to include any event for consequential damages of any kind or nature.
- V. The Client acknowledges that the Consultant's recommendations, interpretations, opinions, and conclusions regarding requirements of applicable codes, ordinances, laws, and regulations shall be based on the current versions of said authorities as they exist at the time of the site review and may not reflect versions existing before or after the date of the review.
- VI. The Client further acknowledges that preventive maintenance is required on all mechanical and electrical systems to assure safe, proper, and consistent operation of the equipment, and that said preventive maintenance is Client's sole responsibility.
- VII. The Client shall provide to the Consultant, at its own expense, any information as required by the Consultant to complete the services described herein. It is agreed that the Consultant shall be entitled to rely on all Client-supplied information being current, complete, and accurate regardless of the original source.
- VIII. When fully executed by both parties, this Agreement constitutes the Contract between the parties hereto and any prior representations or agreements, oral or written, not expressly incorporated herein, are superseded.

This Agreement shall be governed by laws of the State of California. Any actions pertaining to or arising out of this Agreement shall be filed in Marin County, California.

FOR: **CITY OF FAIRFIELD**

FOR: **JE SELLEN CONSULTING, INC.**

ACCEPTED

ACCEPTED

BY: \_\_\_\_\_

BY: JOHN E. SELLEN

SIGNATURE: \_\_\_\_\_

SIGNATURE: John E Sellen

TITLE: \_\_\_\_\_

TITLE: PRINCIPAL

DATE: \_\_\_\_\_

DATE: OCTOBER 9, 2017

## **EXHIBIT "B"**

### **PAYMENT**

1) The total contract price for services rendered by CONSULTANT under this Agreement shall be as specified in the individual task orders and shall not exceed \$24,090.

2) Payment shall be made to CONSULTANT on a time and materials basis, and CONSULTANT shall submit monthly invoices to Fred Beiner, Park Planner, for the same.

3) Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to in writing by the CITY and CONSULTANT, and shall be billed on a time and materials basis to Fred Beiner, Park Planner.

## EXHIBIT "C"

### GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

4) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs



incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(c)(2), to the fullest extent allowed by law, CONSULTANT shall hold harmless, defend and indemnify the CITY, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, to the fullest extent allowed by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

11) PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12) LOCAL EMPLOYMENT POLICY. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action

program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

## EXHIBIT "D"

### INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

#### 1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of \$1,000,000 per accident for bodily injury and property damage.

c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

#### 2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$\_\_\_\_\_
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$\_\_\_\_\_.

### 3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are

to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.